



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/01267/2018**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Manchester

On 18 October 2018

**Decision &
Promulgated**

On 07 November 2018

Reasons

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**MR S R M
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Brown, Counsel, instructed by Citizens Advice Bureau

(Bolton)

For the Respondent: Mr M Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. On 11 January 2018 the respondent made a decision to refuse the protection claim of the appellant, a national of Iraq of Kurdish ethnicity. On 5 March 2018 Judge T R Smith of the First-tier Tribunal (FtT) dismissed his appeal against that decision.
2. The appellant's first ground avers that the judge's adverse credibility findings were unsafe because the judge used s. 8 of the AI (TC) Act 2004 as the "starting point". This was said to be contrary to higher court

authority, **JT (Cameroon)** [2008] EWCA Civ 878 in particular. The appellant's second ground alleges a failure to consider risk on return in the light of the amended country guidance in **AA (Iraq)** [2017] EWCA Civ 944 in respect of internal relocation and also feasibility of return. In connection with the latter, the grounds submit that the judge wrongly concluded that the appellant's relatives could feasibly obtain his CSID and forward it to him.

3. I am grateful to both representatives for their succinct submissions. As the appellant was not granted permission on the first ground, I go straight to the appellant's second ground first. Insofar as it contends that the judge wrongly assessed internal relocation, I consider it is devoid of merit. The judge proceeded on the basis of a concession by the respondent that the appellant could not safely return to his home area of Kirkuk because it was a contested area. (It is true that the judge described this concession as being in relation to "internal relocation to Kirkuk" (paragraph 22) but its effect was the same insofar as lack of safety was concerned.) The judge properly recognised that for the appellant the internal relocation issue had primarily to be examined in return to the IKR where the appellant had previously resided (albeit briefly). The judge then gave a series of reasons at paragraphs 86-103 why he considered the IKR would be both safe and reasonable for the appellant to relocate to. Mr Brown contends that the appellant had to be taken as someone who had lost touch with his family in Kirkuk but on the judge's findings at paragraph 105 the appellant had a brother in Kirkuk involved with the security services and an uncle who was a wealthy trader. It was open to the judge to make these findings notwithstanding that he found the core of the appellant's account not credible. The written grounds wholly fail to identify any error in these reasons. Mr Brown sought to argue that there is medical evidence showing the appellant has cardiac problems which would affect his employment prospects in the IKR but the judge took these into account at paragraphs 93-96 and was entitled to assess that such problems would not affect his ability to work.
4. Insofar as ground 2 asserts that the judge wrongly applied country guidance on the issue of feasibility of return, it is true that the judge appears to have sought to apply an old country guidance case (**AA** [2015] rather than **AA** [2017] EWCA Civ 904) but his analysis of the CSID was wholly consistent with the latter. The judge stated at paragraphs 104-106 that:
 - "104. The Appellant has held a CSID card. He said he left it in Kirkuk. Given the Appellant's family still live in Kirkuk there is no reason why that document could not be provided to him. The CSID card will allow the Appellant to access benefits and housing.
 105. If the CSID card has been destroyed, (which was not the Appellant's contention) given the Appellants (sic) brothers (sic) involvement with the security services (the Appellant described it as a specialist SWAT team member) and the fact that his uncle is a wealthy trader he has relatives who can

vouch for him and act as his attorneys and it is likely his brother will have the connections to assist in obtaining a replacement.

106. In my judgement it is feasible that the Appellants (sic) relatives will be able to forward to him the necessary documentation or obtain replacement documentation."

Although objecting to this assessment, the grounds wholly fail to identify any substantive error in it.

5. As regards ground 1, I would state for completeness that I do accept that the judge erred in describing s. 8 as a "starting point" inasmuch that this tends to convey that he treated findings on s. 8 considerations as of primary importance or as an established platform absent countervailing evidence. However, I fail to see that the judge in fact treated s. 8 considerations as primary. It is true that the judge devoted several paragraphs to his analysis of s. 8 considerations (paragraphs 66-71) and that he concluded the appellant's conduct in failing to claim asylum in Greece or France without a good or credible explanation "damages his credibility" (paragraph 70). At the same time, read as a whole the judge clearly assessed the credibility of the appellant's account in the round, concluding at paragraph 34 that:

"34. The Appellant claimed that he would be killed by Hawnaz's family if he returned anywhere within Iraq."

6. Immediately above that paragraph, the judge sets out numerous reasons, quite unrelated to s. 8 considerations, for finding the appellant's account deficient, including a number of inconsistencies, and implausibilities and a lack of a satisfactory explanation of the same (paragraphs 72-83). I believe this background is what led to DUTJ Chapman to refuse permission on this point and I concur with her decision on it.

Notice of Decision

7. For the above reasons I conclude that the FtT Judge did not materially err in law and that accordingly the judge's decision to dismiss the appellant's appeal must stand.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 26 October 2018

A handwritten signature in black ink, reading 'H H Storey'. The signature is written in a cursive style with a large, stylized 'S'.

Dr H H Storey
Judge of the Upper Tribunal